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Our File No.: 117948

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Lea Rosen, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

LJ Ross Associates, Inc.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Lea Rosen, individually and on behalf of all others similarly situated (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against LJ Ross Associates, Inc. (hereinafter referred to as “*Defendant*”), as follows:

INTRODUCTION

1. This action seeks to recover for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (the “FDCPA”).

JURISDICTION AND VENUE

2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).

3. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

4. At all relevant times, Defendant conducted business within the State of New York.

PARTIES

5. Plaintiff Lea Rosen is an individual who is a citizen of the State of New York residing in Kings County, New York.

6. Plaintiff is a natural person allegedly obligated to pay a debt.

7. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

8. On information and belief, Defendant LJ Ross Associates, Inc., is a Michigan Corporation with a principal place of business in Jackson County, Michigan.

9. Defendant regularly collects or attempts to collect debts asserted to be owed to others.

10. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

11. The principal purpose of Defendant's business is the collection of such debts.

12. Defendant uses the mails in its debt collection business.

13. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

THE FDCPA AS IT RELATES TO THE CLAIMS HEREIN

14. Congress enacted the FDCPA upon finding that debt collection abuse by third party debt collectors was a widespread and serious national problem. *See* S. Rep. No. 95-382, at 2 (1977), *reprinted in* U.S.C.C.A.N. 1695, 1696; 15 U.S.C § 1692(a).

15. The purpose of the FDCPA is to protect consumers from deceptive or harassing actions taken by debt collectors, with the aim of limiting the suffering and anguish often inflicted by independent debt collectors. *Kropelnicki v. Siegel*, 290 F.3d 118, 127 (2d Cir. 2002); *Russell v. Equifax A.R.S.*, 74 F.3d 30, 34 (2d Cir. 1996).

16. To further these ends, “the FDCPA enlists the efforts of sophisticated consumers ... as 'private attorneys general' to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others.” *Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 91 (2d Cir. 2008).

17. As such, the circumstances of the particular debtor in question have no bearing as to the question of whether there has been a violation of the FDCPA. *See Easterling v. Collecto, Inc.*, 692 F.3d 229, 234 (2d Cir. 2012). Indeed, it is not necessary for a plaintiff to show that he or she was confused by the communication received. *Jacobson*, 516 F.3d at 91. Likewise, the plaintiff consumer's actions or inaction in response to a communication from a debt collector are irrelevant. *Thomas v. Am. Serv. Fin. Corp.*, 966 F. Supp. 2d 82, 90 (E.D.N.Y. 2013).

18. Instead, “the test is how the least sophisticated consumer—one not having the astuteness of a ‘Philadelphia lawyer’ or even the sophistication of the average, everyday, common consumer—understands the notice he or she receives.” *Russell*, 74 F.3d at 34.

19. If a debt collector's communication is “reasonably susceptible to an inaccurate reading” by the least sophisticated consumer, it violates the FDCPA. *DeSantis v. Computer Credit, Inc.*, 269 F.3d 159, 161 (2d Cir. 2001). Similarly, a communication violates the FDCPA if it is “open to more than one reasonable interpretation, at least one of which is inaccurate,” or if the communication “would make the least sophisticated consumer uncertain as to her rights.” *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993); *Jacobson*, 516 F.3d at 90.

20. The FDCPA is a strict liability statute, and a debt collector's intent may only be considered as an affirmative defense. 15 U.S.C. § 1692k(c); *Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 135 (2d Cir. 2010). Likewise, “the degree of a defendant's culpability may only be considered in computing damages.” *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 63 (2d Cir. 1993). A single violation of the FDCPA to establish civil liability against the debt collector. *Id.*

ALLEGATIONS SPECIFIC TO PLAINTIFF

21. Defendant alleges Plaintiff owes a debt (“the alleged Debt”).

22. The alleged Debt is an alleged obligation of Plaintiff to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

23. The alleged Debt does not arise from any business enterprise of Plaintiff.

24. The alleged Debt is a “debt” as defined by 15 U.S.C. § 1692a(5).

25. At an exact time known only to Defendant, the alleged Debt was assigned or otherwise transferred to Defendant for collection.

26. At the time the alleged Debt was assigned or otherwise transferred to Defendant for collection, the alleged Debt was in default.

27. In its efforts to collect the alleged Debt, Defendant contacted Plaintiff by letter (“the October Letter”) dated October 1, 2018. (A true and accurate copy is annexed hereto as “**Exhibit 1.**”)

28. In its efforts to collect the alleged Debt, Defendant contacted Plaintiff by another letter (“the November Letter”) dated November 21, 2018. (A true and accurate copy is annexed hereto as “**Exhibit 2.**”)

29. The Letters conveyed information regarding the alleged Debt.

30. The Letters are “communications” as defined by 15 U.S.C. § 1692a(2).

31. The October Letter was the initial written communication Plaintiff received from Defendant concerning the alleged Debt.

32. The Letters were received and read by Plaintiff.

33. 15 U.S.C. § 1692g protects Plaintiff's concrete interests. Plaintiff has the interest and right to receive a clear, accurate and unambiguous validation notice, which allows a consumer to confirm that he or she owes the debt sought to be collected by the debt collector. As set forth herein, Defendant deprived Plaintiff of this right.

34. 15 U.S.C. § 1692e protects Plaintiff's concrete interests. Plaintiff has the interest and right to be free from deceptive and/or misleading communications from Defendant. As set forth herein, Defendant deprived Plaintiff of this right.

35. The deprivation of Plaintiff's rights will be redressed by a favorable decision herein.

FIRST COUNT

Violation of 15 U.S.C. §§ 1692e and 1692e(10)

36. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

37. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

38. 15 U.S.C. § 1692e(10) prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt.

39. A debt collection practice can be a “false, deceptive, or misleading” practice in violation of 15 U.S.C. § 1692e even if it does not fall within any of the subsections of 15 U.S.C. § 1692e. *Clomon*, 988 F.2d at 1318.

40. A collection letter violates 15 U.S.C. § 1692e if, in the eyes of the least sophisticated consumer, it is open to more than one reasonable interpretation, at least one of which is inaccurate. *Clomon*, 988 F.2d at 1319.

41. A collection letter also violates 15 U.S.C. § 1692e if, it is reasonably susceptible to an inaccurate reading by the least sophisticated consumer. *DeSantis*, 269 F.3d at 161.

42. The October Letter (received on October 1, 2018) is the initial letter that the Plaintiff received pertaining to the alleged debt and it contained various validation rights that Plaintiff could exercise within 30 days of the receipt of such letter.

43. The November Letter (received on November 21, 2018) is the second letter, which the Plaintiff received pertaining to the alleged debt and it again contained various validation rights that Plaintiff could exercise within 30 days of the receipt of such letter.

44. The October Letter makes it appear that the period for exercising the validation rights begun with the receipt of such letter and ended with it.

45. The November Letter again represents that the period for exercising the validation rights begun with the receipt of such letter and ended with it.

46. The October Letter can be interpreted to mean that such period of 30 days to exercise the validation rights started with the receipt of such letter.

47. The November Letter can also be interpreted to mean that such period of 30 days to exercise the validation rights started with the receipt of such letter.

48. As a result of the foregoing, in the eyes of the least sophisticated consumer, the letters are open to more than one reasonable interpretation, at least one of which is inaccurate.

49. Because the letters are open to more than one reasonable interpretation, they violate 15 U.S.C. §§ 1692e and 1692e(10).

50. Because the letters are reasonably susceptible to an inaccurate reading by the least sophisticated consumer, they violate 15 U.S.C. §§ 1692e and 1692e(10).

51. For the foregoing reasons, Defendant violated 15 U.S.C. §§ 1692e and 1692e(10) and is liable to Plaintiff therefor.

SECOND COUNT
Violations of 15 U.S.C. §§ 1692g and 1692e

52. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

53. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information.

54. 15 U.S.C. § 1692g(a)(3) requires the notice to include a statement that unless the consumer, within thirty days of receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector.

55. There is no requirement that the consumer dispute the debt in writing.

56. The debt collector has the obligation to provide validation and cannot advise the Plaintiff to contact the Creditor for disputing the debt.

57. It is a violation of the FDCPA to require disputes be made in writing.

58. It is a violation of the FDCPA to require disputes be made directly to the Creditor.

59. It is a violation of the FDCPA to include language in the letter that overshadows the required 15 U.S.C. § 1692g(a)(3) statement.

60. It is a violation of the FDCPA to include language in the letter that contradicts the required 15 U.S.C. § 1692g(a)(3) statement.

61. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, overshadows the required § 1692g(a)(3) statement.

62. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, contradicts the required § 1692g(a)(3) statement.

63. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, leads the least sophisticated consumer to believe that her dispute must be made in writing.

64. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, leads the least sophisticated consumer to believe that her dispute must be made to the creditor.

65. The Letter states, “**MAIL ALL CORRESPONDENCES TO:**”

66. Disputes need not be in writing. *Hooks v. Forman, Holt, Eliades & Ravin, LLC*, 717 F.3d 282 (2d Cir. 2013).

67. Disputes may be made orally.

68. The debt collector cannot direct the consumers to lodge their disputes with the creditor.

69. The language directing all correspondence be mailed to the creditor’s address, overshadows the required 15 U.S.C. § 1692g(a)(3) statement.

70. The language directing all correspondence be mailed to the creditor’s address, contradicts the required 15 U.S.C. § 1692g(a)(3) statement.

71. The language directing all correspondence be mailed to the creditor’s address, when examined from the perspective of the least sophisticated consumer, overshadows the required § 1692g(a)(3) statement.

72. The language directing all correspondence be mailed to the creditor’s address, when examined from the perspective of the least sophisticated consumer, contradicts the required § 1692g(a)(3) statement.

73. The language directing all correspondence be mailed to the creditor’s address, when examined from the perspective of the least sophisticated consumer, leads the least sophisticated consumer to believe that her dispute must be in writing and sent to the stated address.

74. Defendant has violated § 1692g, as the language directing all correspondence be mailed to the creditor’s address overshadows the information required to be provided by that Section. *See Vetrano v. CBE Grp., Inc.*, 2016 WL 4083384 (E.D.N.Y. Aug. 1, 2016); *Balke v. Alliance One Receivables Management, Inc.*, No. 16-CV-5624(ADS)(AKT), 2017 WL 2634653 (E.D.N.Y. June 19, 2017).

75. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

76. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on any non-enumerated practice.

77. Collection notices are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.

78. The question of whether a collection letter is deceptive is determined from perspective of the “least sophisticated consumer.”

79. The language directing all correspondence be mailed to the creditor’s address could be reasonably interpreted by the least sophisticated consumer as incorrectly representing that a dispute must be communicated in writing and sent to the stated address. *See Vetrano v. CBE Grp., Inc.*, 2016 WL 4083384 (E.D.N.Y. Aug. 1, 2016); *Balke v. Alliance One Receivables Management, Inc.*, No. 16-CV-5624(ADS)(AKT), 2017 WL 2634653 (E.D.N.Y. June 19, 2017).

80. Because the Letter is reasonably susceptible to an inaccurate reading, as described above, it is deceptive within the meaning of the FDCPA.

81. The least sophisticated consumer would likely be deceived by the language directing all correspondence be mailed to the creditor’s address.

82. The least sophisticated consumer would likely be deceived in a material way by language directing all correspondence be mailed to the creditor’s address.

83. The misrepresentation is material because it could impede the least sophisticated consumer’s ability to respond to the Letter or dispute the debt.

84. Defendant has violated § 1692e by using a false, deceptive, and misleading representation in its attempt to collect a debt.

85. For the foregoing reasons, Defendant violated 15 U.S.C. §§ 1692g and 1692e and is liable to Plaintiff therefor.

CLASS ALLEGATIONS

86. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of New York.

87. Plaintiff seeks to certify a class of:

All consumers to whom Defendant sent a collection letter substantially and materially similar to the Letters sent to Plaintiff, which letter was sent on or after a date one year prior to the filing of this action to the present.

88. This action seeks a finding that Defendant's conduct violates the FDCPA, and asks that the Court award damages as authorized by 15 U.S.C. § 1692k.

89. The Class consists of more than thirty-five persons.

90. Plaintiff's claims are typical of the claims of the Class. Common questions of law

or fact raised by this action affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

91. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendant has acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

92. Plaintiff will fairly and adequately protect and represent the interests of the Class. The management of the class is not extraordinarily difficult, and the factual and legal issues raised by this action will not require extended contact with the members of the Class, because Defendant's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff has retained counsel experienced in actions brought under consumer protection laws.

JURY DEMAND

93. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment be entered:

- a. Certifying this action as a class action; and
- b. Appointing Plaintiff as Class Representative and Plaintiff's attorneys as Class Counsel;
- c. Finding Defendant's actions violate the FDCPA; and
- d. Granting damages against Defendant pursuant to 15 U.S.C. § 1692k; and
- e. Granting Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1692k; and
- f. Granting Plaintiff's costs; all together with

g. Such other relief that the Court determines is just and proper.

DATED: September 27, 2019

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